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SUBSIDIARY BODY FOR IMPLEMENTATION

REPORT OF THE SUBSIDIARY BODY FOR IMPLEMENTATION ON THE WORK OF ITS THIRTEENTH SESSION (PART ONE) LYON, 11-15 SEPTEMBER 2000

Addendum

PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE UNDER THE KYOTO PROTOCOL[1]

Proposals by the Co-Chairmen of the Joint Working Group on Compliance

[PROCEDURES AND MECHANISMS RELATED TO COMPLIANCE UNDER THE KYOTO PROTOCOL]

[A COMPLIANCE SYSTEM FOR THE KYOTO PROTOCOL

TEXT

Section I. General provisions

Objective

1. The objective of the [procedures and mechanisms relating to compliance] [compliance system] is to facilitate, promote [and enforce] compliance with the commitments of the Protocol, in the manner set out in the following provisions [, and in accordance with the principles of the Convention].

Nature

Option 1

2. The [procedures and mechanisms relating to compliance] [compliance system] shall be credible, fair, coherent, comprehensive, unified, effective, predictable, transparent and simple.

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[1] This item was considered jointly with the Subsidiary Body for Scientific and Technological Advice at the first part of the thirteenth sessions, under agenda item 5.

Option 2

3. *The nature of the [procedures and mechanisms relating to compliance] [compliance system] should not be expressly provided for in the operative text, as its nature will be implicit from the content of the text. Alternatively, its nature could be reflected in the preamble or in a decision accompanying the adoption of the [procedures and mechanisms relating to compliance] [compliance system].*

Principles

Option 1

4. The operation of the [procedures and mechanisms relating to compliance] [compliance system] shall [be guided by] [be based on] the [principles set out in Article 3 of the Convention] [and the recognized principles under international law] [and in particular shall]:

[(a) Be proportionate, in that the procedures, mechanisms and consequences should take into account the cause, type, degree and frequency of non-compliance;]

[(b) Adhere to the principle of common but differentiated responsibilities as defined in the Convention;]

[(c) Treat all Parties that have undertaken the same commitments in an equivalent manner;]

[(d) Be based on principles of efficiency and due process allowing Parties, and in particular the Party concerned, an opportunity for a full, fair and timely [consideration and] resolution of compliance-relating issues; [, including the presumption that a Party has complied with its commitments unless non-compliance is established;]]

[(e) Provide for reasonable certainty; prevention of non-compliance; importance of domestic compliance and enforcement; creating appropriate incentives to comply; restoration to the environment of excess tonnes; automaticity; and transparency.]

Option 2

5. *Principles governing the operation of the [procedures and mechanisms relating to compliance] [compliance system] should not be expressly provided for in the text, as they are contained in the Convention and the Protocol and could be implicit from the content of the text, or be reflected in the preamble or in a decision accompanying the adoption of the [procedures and mechanisms relating to compliance] [compliance system].*

Scope of application

Option 1

6. The [procedures and mechanisms relating to compliance] [compliance system] shall apply to all commitments [contained] [, and referred to,] in [and under] the Protocol.

Option 2

7. The [procedures and mechanisms relating to compliance] [compliance system] shall apply to all commitments [contained] [, and referred to,] in [and under] the Protocol, [as provided in this decision.] [, except where otherwise provided.]

Option 3

8. The [procedures and mechanisms relating to compliance] [compliance system] shall apply to all commitments [contained] [and referred to] in [and under] the Protocol, [and, as appropriate, the rules, guidelines, and procedures thereunder] [, except that all compliance and non-compliance issues with respect to the clean development mechanism (CDM) shall be dealt with exclusively by the executive board of the CDM].

Option 4

9. The [procedures and mechanisms relating to compliance] [compliance system] shall apply to [Articles 3.1, 4.1, 5, 7, 8, 6, [12], 17] [all commitments of Annex I Parties] [contained] [, and referred to,] in [and under] the Protocol. [All issues of compliance with other commitments [contained] [, and referred to,] in [and under] the Protocol shall be addressed and determined by the multilateral consultative process under Article 16.]

Option 5

10. The scope of application should not be expressly provided for in the text.

Section II. Establishment and structure

Compliance Committee

1. A Compliance Committee (hereinafter referred to as the "Committee") is hereby established [as an administrative and subsidiary body of the COP/MOP] [pursuant to Article 18 of the Protocol].

2. The Committee shall function through [a plenary, and] two branches, namely, the facilitative branch and the enforcement branch.

3. The Committee shall consist of [15] [...] members, elected by the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP) [based on equitable geographical representation of the five regional groups, and taking into account the interest

groups as reflected by the current practice in the UNFCCC Bureau] [...]]. Members of the Committee shall be nominated by the Parties and shall serve in their personal capacity. Members shall have recognized competence relating to climate change and in relevant fields, such as the scientific, technical, socio-economic or legal fields.

4. The Committee shall constitute a Bureau [with administrative functions] consisting of [...] members, [...] to be chosen from the facilitative branch and [...] from the enforcement branch.

5. The facilitative branch and the enforcement branch shall interact and cooperate in their functioning and, as necessary, on a case-by-case basis, the Bureau may designate one or more members of one branch to contribute to the work of the other branch [on a non-voting basis].

Facilitative branch

Membership

6. The facilitative branch shall consist of [10] [...] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation of the five United Nations regional groups, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau] [...], [five] [...] of whom shall be elected at the first session of the COP/MOP, for a term of two years, and [five] [...] members for a term of four years. At each biennium thereafter, the COP/MOP shall elect [five] [...] new members for a term of four years. Outgoing members may be re-elected for one consecutive term.

7. The membership of the facilitative branch shall reflect in a balanced manner the competence in the fields referred to in paragraph 3 of this section.

Mandate

Option 1

8. The facilitative branch shall be responsible for providing advice and facilitation to all Parties in implementing the Protocol and for promoting the compliance of [Annex I] Parties with their commitments in and under the Protocol.

[9. Taking into account the differentiated responsibilities of Annex I and non-Annex I Parties, the facilitative branch shall with regard to non-Annex I Parties apply the consequences set out in section IV, paragraphs ..., and with respect to Annex I Parties the consequences set out in section IV, paragraphs ...]

[10. The facilitative branch shall not apply the outcomes or consequences set out in section IV, paragraphs ...]

Option 2

11. The facilitative branch shall be responsible for promoting compliance [and] [by] providing advice and facilitation concerning individual Parties' implementation of commitments in and under the Protocol.

Option 3

12. The facilitative branch may, depending upon the particular case before it:

(a) Provide advice to a Party regarding its implementation of the Protocol;

(b) Indicate to a Party where and how to seek advice and assistance regarding its implementation of the Protocol, including arranging collective efforts to facilitate assistance;

(c) Assist, facilitate and mediate a Party's access to financial and technical assistance, including through technology transfer and capacity-building.

13. Any recommendation of the facilitative branch shall be sent to the Party concerned for its consideration.

Procedures to be followed

14. The facilitative branch shall follow the procedure set out in section III, paragraphs 13 to 24.

15. [The multilateral consultative process referred to in Article 16 of the Protocol may be designated to perform the responsibilities of the facilitative branch.] [The facilitative branch shall constitute the multilateral consultative process referred to in Article 16 of the Protocol.]

Enforcement branch

Membership

16. The enforcement branch shall consist of [five] [...] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation of the five regional groups, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau] [one half from among Annex I Parties and one half from among non-Annex I Parties] [a larger representation from Annex I Parties] [[four] [five] [...] members nominated by Annex I Parties]. The COP/MOP shall, at its first session, elect [two] [...] members for a term of two years and [three] [...] members for a term of four years. At each biennium thereafter, the COP/MOP shall alternately elect [two] [...] or [three] [...] new members, as appropriate, for a term of four years. Outgoing members may be re-elected for one consecutive term.

17. [The [majority of the] members of the enforcement branch shall have legal experience.] [The membership of the enforcement branch shall reflect in a balanced manner the competence

in the fields referred to in paragraph 3 of this section, recognizing the necessity of including members with legal experience.]

Mandate

18. The enforcement branch shall be responsible for:

(a) Determining whether a[n Annex I] Party is in non-compliance with Articles [3.1] [, 2 and 3];

[(b) Determining whether a[n Annex I] Party is in non-compliance with Article 3.14];

[(c) Determining whether a[n Annex I] Party is in non-compliance with Article 5 and/or Article 7];

(d) Determining [in the event of a disagreement], whether to apply adjustments to inventories under Article 5.2 [and with Article 7.4];

(e) Determining whether a[n Annex I] Party [is] [or] [is not] meeting any eligibility requirement [of Annex I Parties] under Articles 6, [12] and/or 17 of the Protocol;

(f) [Determining whether to apply] [Applying] the consequences set out in section IV, paragraph..., [with respect to Annex I Parties];

[(g) *Other elements*].

Procedures to be followed

19. The enforcement branch shall follow the procedures set out in section III, paragraphs 25 to 39.

[20. The proceedings of the enforcement branch shall apply to Annex I Parties only.]

[21. In applying the consequences set out in section IV, a certain degree of flexibility shall be allowed by the enforcement branch to the Parties included in Annex I undergoing the process of transition to a market economy.]

Section III. Procedures

Submission of questions of implementation

1. The Committee may receive questions of implementation [indicated in a report of the expert review teams under Article 8, or] submitted by:

(a) Any Party with respect to itself;

[(b) Any Party with respect to another Party, supported by corroborating information [with respect to the facilitative branch only];

[(c) The COP/MOP, except that a Party may not participate in the decision with respect to a question directly concerning itself;]

[(d) The executive board or other bodies established under Articles 6, [12] or 17].

2. Submissions under paragraph 1, subparagraphs (b)-(d) above, shall be made available by the secretariat to the Party concerned, within [...] weeks of the receipt by the Committee of a question of implementation referred to in paragraph 1.

Reports of expert review teams under Article 8

Option 1

3. In addition to receiving a report containing a question of implementation referred to in paragraph 1, the [Committee] [enforcement branch] shall receive all other final reports of the expert review teams. Upon receipt of such final reports, the [Committee] [enforcement branch] shall notify the secretariat that it is not proceeding with any questions of implementation in relation to any final reports.

Option 2

4. Pursuant to Article 8.3 of the Protocol, the reports of expert review teams shall be considered by a panel of the COP/MOP with a view to ascertaining that the reports are in accordance with the guidelines to be established by the COP/MOP.

5. The panel shall consist of [...] members elected annually by the COP/MOP on the basis of equitable geographical representation. It shall meet as necessary during the inter-sessional period of the COP/MOP, and to be presided over by [...].

6. The panel shall consider the report of the expert review teams in its first session after transmittal of the report to the COP/MOP, and shall act expeditiously in every case.

7. The panel shall inform the Committee in writing of the results of its consideration of the report of the expert review team. It shall ensure, and not hinder, consideration of the report by the Committee at the earliest possible time.

Option 3

No such section is needed.

Preliminary examination of questions of implementation

8. The [relevant branch] [plenary] shall, [in accordance with agreed criteria adopted by the COP/MOP,] make a preliminary examination of questions to ensure that, except in the case of a question raised by a Party concerning itself, the question:

(a) Is supported by sufficient information;

(b) Is not *de minimis* or ill-founded [, based on the requirements of the Protocol and the rules made pursuant to the Protocol]; or

(c) Is, [with respect to the eligibility requirements [for Annex I Parties] under Articles 6, [12] and 17, in accordance with the non-compliance criteria under Articles 5, 7 and 8].

9. The preliminary examination of a question shall be completed within [...] weeks.

10. After the preliminary examination of a question, the Party concerned shall be notified in writing and, in the event of a decision to proceed, shall be provided with a statement identifying the question of implementation and the information that will be considered and the branch to which the question will be referred.

[Allocation of questions of implementation

11. The [bureau] [plenary] shall allocate questions of implementation to the appropriate branch in line with the responsibilities of each branch as set out in section II, paragraphs 8 to 13 and 18.

[12. No question shall be considered by the enforcement branch until a decision regarding that question has been made by the facilitative branch]]

Procedures for further handling of questions of implementation

13. The following procedure shall apply to the facilitative branch and the enforcement branch, except where otherwise provided in respect of the enforcement branch.

Participation of Parties

14. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question. The Party concerned shall participate in the deliberations but not in the elaboration and adoption of a recommendation or decision of the branch.

15. Within [...] weeks after the notification under paragraph 10 of this section and not less than [...] weeks before the branch considers the questions of implementation, the Party concerned shall be given an opportunity to comment on all information relevant to the questions as well as findings, recommendations and final decisions made by the branch.

Avoidance of conflict of interest

16. [No member of a branch who is a national of a Party that is involved in a question before the branch shall participate in the proceedings relating to that question.]

(Consideration should be given to a provision about the use of alternate members.)

Sources of information

17. The branch shall base its deliberations on information provided by:

(a) Reports of the expert review teams under Article 8 of the Protocol;

(b) The Party or Parties concerned;

(c) [Relevant reports of the COP/MOP and its subsidiary bodies, including,] where appropriate, the other branch.

[18. The branch may also seek and receive additional information from [other experts and organizations qualified in matters covered by the Protocol] [non-governmental organizations and other sources it considers relevant.] [non-governmental organizations and others may provide relevant information to the branch].]

19. Any information received by the branch shall be made available to the Party concerned and, subject to any rules relating to confidentiality, to the public.

Recommendations and decisions

20. The adoption of a preliminary finding, recommendation, or decision not to proceed or a final decision, shall require a quorum of [...].

21. The members of the branch shall make every effort to reach agreement on any preliminary finding, recommendation or decision not to proceed, or final decision, by consensus. If all efforts at reaching consensus have been exhausted, the preliminary finding, recommendation, or decision not to proceed, or final decision shall as a last resort be adopted by a majority of at least [three fourths] of the members of the branch [present and voting]. The final decision shall provide conclusions and reasons therefor.

22. The branch shall forthwith notify the Party concerned in writing of its preliminary finding, recommendation or decision, with conclusions and reasons therefore. The branch shall make copies available to all other Parties and to the public.

[Translation of documents

23. Any question of implementation submitted under paragraph 1, information received under paragraph 17 and 18 and a preliminary finding, recommendation or decision made under

paragraph 20, shall be translated into one of the United Nations official languages, if requested by the Party concerned.]

Rules of procedure

24. The [COP/MOP] [Committee] may further develop rules of procedure for the branches, including for confidentiality, consistent with these [procedures] [provisions].

Proceedings of the enforcement branch

Written submission

25. Within [...] weeks after the receipt of the notification under paragraph 10 of this section and not less than [...] weeks before the branch is scheduled to consider the question of implementation, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.

Hearing

26. If so requested in writing by the Party concerned within [...] weeks of the notification, the branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The Party concerned may present [expert testimony] [opinion] at the hearing. [Such a hearing shall be held in public unless the branch decides that part or all of the hearing shall take place in private.]

27. The branch may [put questions to] [seek clarification from] the Party concerned either in the course of such a hearing, or at any time in writing and the Party concerned may provide a response within [...] weeks thereafter.

Reference to the facilitative branch

[28. The enforcement branch may, at any time, where appropriate, refer a question to the facilitative branch for consideration.]

Preliminary finding

29. Within [...] weeks from receipt of the Party's written submission under paragraph 25, or within [...] weeks from the date of any hearing pursuant to paragraph 26, or within [...] weeks from the notification under paragraph 10 of this section if the Party has not provided a written submission, whichever is the latest, the branch shall:

(a) Make and issue a preliminary finding that the Party concerned is in breach of a commitment referred to in section II, paragraph 18, does not meet an eligibility requirement under Articles 6, [12] or 17 [or that an adjustment applies], and

(b) Otherwise determine not to proceed further with the question.

30. The preliminary finding or the decision not to proceed shall provide conclusions and reasons therefor.

31. The branch shall forthwith notify the Party concerned in writing of its preliminary finding or decision not to proceed. The decision not to proceed shall be made available to other Parties and to the public.

Expedited procedure

32. Where a question relates to eligibility requirements [of Annex I Parties] under Articles 6, [12] or 17 [, including adjustments related to the observance of eligibility requirements], paragraphs [25 to 31] of this section shall apply, except that:

[(a) The preliminary examination referred to in paragraph 8 above shall be conducted within [1] week;]

(b) The branch shall issue its [preliminary finding or] decision not to proceed within [six] weeks of being informed in writing of a question of implementation [identified by an expert review team under Article 8];

(c) The Party concerned may make a written submission within [four] weeks after receipt of the notification.

Final decision

33. Within [...] weeks from the receipt of the notification of the preliminary finding, the Party concerned may provide a further written submission. If that Party does not do so within that period of time, the branch shall issue a final decision confirming its preliminary finding.

34. If the Party concerned provides a further written submission, the branch shall, within [...] weeks from the date it received the further submission, consider it and make a final decision, indicating whether the preliminary finding is confirmed, and, if so, which part.

35. The final decision shall provide conclusions and reasons therefor.

36. The branch shall forthwith notify in writing the Party concerned of its final decision and make it available to the other Parties and to the public.

37. Where the expedited procedure under paragraph 32 of this section applies, [the period during which the Party may reply to a preliminary finding shall be [four] weeks, and] the branch shall issue its final decision within [two] [...] weeks of receiving any such reply.

Adoption of findings and decisions

38. The adoption of a preliminary finding, a recommendation, a decision not to proceed, or a final decision, of the enforcement branch shall require a quorum of [...].

39. The members of the enforcement branch shall make every effort to reach agreement on any preliminary finding, recommendation, or decision not to proceed or final decision, by consensus. If all efforts at reaching consensus have been exhausted, the preliminary finding, recommendation or decision not to proceed or final decision, shall as a last resort be adopted by a majority of at least [three fourths] of the members of the branch [present and voting].

Appeal

Option 1

40. The Party concerned may appeal against a decision of the Committee [involving consequences relating to its non-compliance with Article 3.1] [and Article 4.1] [or against a decision of the Committee that a Party does not meet the eligibility requirements for one or more of the mechanisms set forth in or under Articles 6, [12] and 17].

41. [A standing appellate body is hereby established. It shall consist of seven members, three of whom shall serve on any one appeal. Members of the appellate body shall be elected by the [Committee] [COP/MOP] for terms of not more than four years. Members of the appellate body shall be recognized authorities in relevant fields, and have the requisite scientific, technical, socio-economic, or legal qualifications and experience to carry out their functions. They shall not be affiliated to any government and shall serve in their personal capacities.]

Or

[An appeal may be made to the COP/MOP. The COP/MOP may agree by [consensus] [[…] majority] to override a decision made by the Committee on issues set out in paragraph 40.]

[42. The working procedure for appeals may be developed by the [COP/MOP] [appellate body] […].]

Option 2

43. There should be no procedure for appeal.

COP/MOP

44. The Committee shall report on all its activities to each ordinary session of the COP/MOP in accordance with guidelines for such reports adopted by the COP/MOP.

45. The COP/MOP shall [review] [take note of] [consider] reports of the Committee, [and provide guidance] including on any issues regarding implementation that may have implications for the work of the subsidiary bodies.

[46. The COP/MOP shall accept the reports of the Committee, unless the COP/MOP decides by consensus not to do so.]

[47. The COP/MOP [shall] [may] provide general policy guidance to the Committee.]

[True-up] period

48. A [true-up] period is defined as a period of [[36] [...] months following the end of the commitment period] [[one] [...] month after the publication of the final report of the expert review of the inventory of the last Party to be reviewed for the last year of the commitment period] [other].

49. During the [true-up] period, in order to fulfil its commitments under Article 3.1, any Party may:

[(a) Continue to acquire [and transfer] ERUs, CERs and AAUs under Articles 6, [12] and 17 from the preceding commitment period (provided it has not been found ineligible to participate [in any mechanism under that Article])];

[(b) Make a voluntary payment into a climate change fund or funds].]

Section IV. Consequences

Facilitative branch

Option 1

1. The facilitative branch shall, with regard to non-Annex I Parties, depending upon the particular question before it, decide upon one or more of the following consequences:

(a) The provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building, taking into account the provisions of Article 4.7 of the Convention and the relevant decisions of the COP.

2. The facilitative branch shall, with regard to Annex I Parties, depending on the particular question before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following consequences:

(a) Provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

(b) Making recommendations to the Party concerned;

(c) Publication of non-compliance [or potential non-compliance];

(d) Issuing of cautions;

(e) Initiation of the enforcement procedure set out in section III by the facilitative branch.

Option 2

3. The facilitative branch shall, depending upon the particular question before it, decide upon one or more [of the following] consequences [, including the following]:

(a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;

(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building;

[(c) Making recommendations];

[(d) Publication of [non-compliance as determined by the enforcement branch] [or potential non-compliance;]

[(e) Issuing of cautions;]

(f) *(Other)*

Enforcement branch

[4. The consequences set out in paragraph … to … shall apply to Annex I Parties only.]

[5. The enforcement branch may, [with regard to Annex I Parties,] depending on the particular case before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following consequences:

[(a) Making recommendations to the Party concerned;]

(b) Publication of non-compliance;

[(c) Issuing of cautions.]

(d) *(Other)*

6. The enforcement branch, where it has determined that [a Party] [an Annex I Party] has failed to meet any eligibility requirement relating to the mechanisms under Articles 6 [12] and 17, shall [make a recommendation regarding] [suspend] the eligibility of the Party concerned for the mechanisms in question, in accordance with the provisions in or under Articles 6 [12] [and] [or] Article 17, as applicable.

Or

If an [Annex I] Party is found by the enforcement branch to be in breach of any of the eligibility requirements under Articles 6 [, 12] [and] [or] 17, [that Party] [and other members of that Party's Article 4 arrangement] may not [, for the mechanism in question]:

(a) [Transfer or] acquire parts of assigned amount; [or]

(b) [Transfer or] acquire emission reduction units; [and] [or]

(c) Acquire certified emission reductions;

in accordance with the provisions of Article 3, until the enforcement branch is satisfied that the Party is in full compliance with the relevant requirements.

7. If the enforcement branch determines that a Party, following the [true-up] period, has not complied with [Article 3] [Article 3.1] [Article 4.1] of the Protocol, It shall [apply] [impose] [request the Party to choose] [one of] the following consequences [, or a combination thereof] [,taking into account the cause, type, degree and frequency of such non-compliance] [unless the Party can demonstrate to the satisfaction of the enforcement branch that the cause, type, degree or frequency of its non-compliance makes it inappropriate to do so].

[Publication of non-compliance

8. The enforcement branch shall notify all Parties to the Protocol of the details of the Party's non-compliance; and publish its determination, including the reasons for it [as well as the summary of reasons presented by Parties] on the UNFCCC web site.] [The publication shall contain any explanatory notes provided by the Party concerned.]

[Recommendation of policies and measures

9. Recommend policies and measures [, taking into account Article 2.3 of the Protocol] [with the aim.].]

[Restoration of excess tonnes

Option 1

10. Determine that [1.3] [1.x] [x] [times] the [number of] excess tonnes shall be deducted from the Party's assigned amount for the commitment period following the period for which the non-compliance with Article 3.1 occurred.

Option 2

11. Purchase units of assigned amount originating in the first commitment period and apply them towards meeting their Article 3.1 commitments [at a penalty rate of 1.x]; or

12. Purchase units of assigned amount originating in the second commitment period and apply them to meeting their Article 3.1 commitments [at a penalty rate of 1.y]; or

13. Purchase a combination of units of assigned amount originating in both the first and second commitment periods and apply them toward meeting their Article 3.1 commitments [at their respective penalty rates, as set out above].]

[Compliance action plan

Option 1

14. The Party in question shall, within [three] months of the determination of the enforcement branch, develop and commit itself to a compliance action plan [, taking into account Article 2.3 of the Protocol,] approved by the enforcement branch, which shall include, *inter alia*:

(i) An analysis of the reasons for the Party's non-compliance;

(ii) Policies and measures that the Party intends to implement in order to restore [1.x] [x][times] the excess emissions, and an analysis of their expected impact on the Party's greenhouse gas emissions;

(iii) A quantified assessment of the use of each of the mechanisms under Articles 6, [12] and 17, and [Article 4] during the commitment period in which the plan is implemented;

(iv) A declaration not to make transfers under Article 3, paragraph 11, for the duration of the implementation of the compliance action plan;

(v) Detailed information on the economic dimension of the implementation of any action under (ii) or (iii) above;

(vi) A timetable for implementing the measures within a time-frame not exceeding [three] years, including clear benchmarks for measuring annual progress in the implementation;

(vii) An assessment of the compatibility of the compliance action plan with the strategy developed by the Party to comply with its obligations during the commitment period in which the compliance action plan is implemented.

15. Measures implemented under the compliance action plan shall not contribute to any Party's compliance with its quantified emission limitation or reduction commitments during the commitment period in which the compliance action plan is implemented.

16. The Party concerned shall submit a progress report on the implementation of the compliance action plan to the enforcement branch annually no later than 15 April. On the basis of the progress report, the enforcement branch may decide on further recommendations, measures or consequences, as appropriate.

Option 2

17. The Party in question shall, [within a specific time period] after the determination of non-compliance, submit to the enforcement branch a compliance action plan setting forth one or more means by which it intends to restore the tonnes in question.

18. The means may include, for example, use of one or more mechanisms under Articles 6 [, 12] and 17, particular measures, and non-allocation of tonnes under a domestic cap-and-trading system [, and use of a voluntary compliance fund].

19. The Party concerned shall submit a progress report on the implementation of the compliance action plan to the enforcement branch annually no later than [...]. On the basis of the progress report, the enforcement branch [shall] [may] determine whether the requisite tonnes have been restored.

20. In the case where the enforcement branch determines [within a specific time-frame,] that some or all of the requisite tonnes have not been restored, it shall deduct the remaining tonnes from the Party's assigned amount for the commitment period following the period for which the non-compliance with Article 3.1 occurred.]

[Restrictions on the use of the mechanisms

Option 1

Loss of access to the mechanisms under Articles 6, [12] and 17:

21. The Party may not make any transfer or acquisition under Article 3 above a level and for a period of time to be determined by the enforcement branch.

Option 2

Loss of eligibility to transfer parts of assigned amounts:

22. Until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period, its eligibility to transfer parts of assigned amount under Article 17 shall be suspended.]

[Compliance fund

23. [A compliance fund is hereby established.]

[24. The Party shall make payments into a compliance fund at a rate to be determined by the enforcement branch that shall be no more than [...].

25. Each such compliance fund shall be administered by an appropriate body nominated by the Party concerned, which shall forthwith inform the Committee of the name and contact details of the body.

26. The body shall use the income of the compliance fund and any interest earned:

(a) To acquire, at a reasonable rate that shall not be higher than [...], parts of assigned amount originating in the commitment period in which the non compliance occurred, or, if no such parts of assigned amount are available;

(b) On one or more domestic and/or international projects to reduce anthropogenic emissions of greenhouse gases. Such projects shall, within [3] months of the date of the determination by the enforcement branch, be submitted by the Party to the enforcement branch for its approval which shall take into account the short- and medium-term benefits for the climate as well as their cost-effectiveness.

27. The emissions reductions achieved by such projects or the parts of assigned amount acquired by the compliance fund shall not contribute to any Party's compliance with its quantified emission limitation or reduction commitments during the commitment period in which the compliance fund is under operation.

28. The Party shall submit a progress report on the operation of the fund to the Committee annually no later than 15 April. It shall also regularly submit audited accounts to the Committee. On the basis of the report and the accounts, the enforcement branch may decide on further recommendations, measures and/or consequences as appropriate.]

[Financial penalty]

[Suspension of rights and privileges]

[Application of Article 4.5 and 4.6]

29. [If one or more Parties operating under Article 4 are found not to be in compliance with Articles 5 and 7, each Party to an agreement under Article 4 shall be responsible for its own level of emissions set out in the agreement.

30. In accordance with Article 4.6 of the Protocol, any non-compliance consequences under this paragraph shall apply to both the regional economic integration organization and any Party that has exceeded its level of emissions as notified in accordance with Article 4.

31. If one or more Parties operating under Article 4 have been found to have exceeded their respective levels of emissions, the Parties operating under such agreement shall not be able to operate under an Article 4 agreement with respect to the commitment period following the period for which the non-compliance with Article 3.1 occurred; and Annex B commitments shall apply.

32. If one or more Parties operating under Article 4 have been found to have exceeded their respective levels of emissions, another Party operating under that Article 4 agreement shall be able to carry over the assigned amount under Article 3.13 only to the extent that the difference between its emissions and its assigned amount under Article 3 is greater than the amount by which the non-complying Parties under Article 4 have exceeded their respective levels of emissions.]

33. [If one or more Parties operating under Article 4 should fail to achieve their total combined level of emission reductions set out in their Article 4 agreement, a Party operating under that agreement shall not be entitled to add units of assigned amount originating in any

other Party, whether gained under the arrangement itself, any other agreement or under Articles 3.3, 3.4, 6, [12] or 17, in meeting its own level of emissions set out in the agreement.]]
[34. In addition to [applying] [imposing] consequences, under paragraph ... of this section, the enforcement branch may, where appropriate, refer the question to the facilitative branch.

Section V. Other provisions

Secretariat

1. The secretariat shall perform the following functions:

(a) Channel information to the Committee;

(b) Service the meetings of the Committee;

(c) Act as the channel of communication with other Protocol bodies.

Relationship with Article 16 of the Protocol

2. [The multilateral consultative process under Article 16 shall provide advice and facilitate assistance [to non-Annex I Parties] with respect to issues relating to their compliance with the Protocol.]

Relationship with Article 19 of the Protocol

3. The Committee shall operate [without prejudice to] [independent of] Article 19 of the Protocol [and decisions under Article 12].

[Evolution] [Amendment]

Option 1

4. [Subject to Article 18,] the procedures and mechanisms relating to compliance may be modified by consensus of the Parties to the Protocol, taking into account any amendment to the Protocol, decisions of the COP/MOP and experience gained with the working of the process.]

Option 2

5. [The procedures and mechanisms relating to compliance shall be amended in accordance with Article 20 of the Protocol.]

Adoption of procedures and mechanisms relating to compliance

Option 1

6. The Conference of the Parties (COP) recommends that the COP/MOP, at its first session, adopts a decision on the procedures and mechanisms relating to compliance.

Option 2

7. The COP decides, at its sixth session, to adopt the procedures and mechanisms relating to compliance, applicable with immediate effect on a politically binding, and an interim basis.

8. The COP/MOP further recommends that the COP/MOP 1, at its first session, adopt an identical text in a legally binding form by amendment of the Protocol.

Option 3

9. The COP decides to adopt an agreement on procedures and mechanisms relating to compliance to be an integral part of the Protocol, and to enter into force at the same time as the Protocol. Such an agreement may contain a final clause to provide for tacit adherence through signature by Parties that have already ratified the Protocol, and for affirmative adherence by other Parties.

Option 4

10. The COP recommends that the COP/MOP, at its first session, adopts a decision on procedures and mechanisms relating to compliance.

11. The COP further decides to recommend that the COP/MOP includes in the amendment establishing the second commitment period provision on procedures and mechanisms relating to compliance.

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